

## **REMARKS**

Before entry of this Amendment, claims 1-35 were pending in the application. Claims 7, 8, 10, 11, 14 and 22-35 have been withdrawn. After entry of this Amendment claims 1-6, 9, 12, 13 and 15 – 21 remain pending under examination. The number of total claims has not been increased, and the number of independent claims has not been increased beyond the number for which payment previously had been made.

Applicants have carefully considered the Examiner's Action of October 26, 2007 and the references cited therein. The following is a brief summary of the Action. Claim 18 was rejected due to informalities. Claims 1-3, 5, 6, 9, 18, 19 and 21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Serbiak et al (U.S.P. 5,846,232). Claims 4, 12, 13, 15-17 and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Serbiak et al in view of Popp et al (U.S.P. 6,716,205).

Applicants have amended claim 18 to provide antecedent basis and accordingly respectfully request withdrawal of the objection to claim 18, as presented herein.

For the reasons explained below, applicants respectfully traverse the rejection of claims 1-3, 5, 6, 9, 18, 19 and 21 under 35 U.S.C. 103(a) as being unpatentable over Serbiak et al.

Applicants' article includes a bodyside liner that is a composite of base layer material that is necked in a first direction and that is bonded directly to at least a first strip of elastomeric material and a second strip of elastomeric material spaced apart from the first strip. In Serbiak et al by contrast, the elastic strips 40 are not part of a composite of the elastic strips 40 bonded directly to a necked bodyside liner 24. For unlike the articles of applicants' claims 1 and 18, the elastic strips 40 of Serbiak et al are

not bonded directly to the bodyside liner 24. Rather, as shown in Serbiak et al Fig. 2, another continuous elastic layer 28 intervenes between the elastic strips 40 of Serbiak et al and the bodyside liner 24 of Serbiak et al. This deficiency in precludes Serbiak et al from rendering claims 1 and 18 unpatentable under 35 U.S.C. 103(a).

At page 4, lines 4 - 22 of the Office Action, it is contended that (emphasis added):

Serbiak teaches that attaching the absorbent core, which is nonextensible, to the base structure prevents extensibility of the absorbent article in the area controlled by the attachment of the absorbent core to the base structure (Figs. 1-4 and 6, col. 4, lines 38-49, col. 8, lines 8-26). Note that Figs. 1, 3, 5, and 6 of Serbiak are top views with the bodyside liner uppermost, which suggests that the attachment indicated by the cross-hatching in these figures includes direct attachment between the absorbent body structure and the necked base layer material of the bodyside liner. Serbiak does not expressly teach that the attachment of the center region of the base layer material to the underlying portion of the absorbent body structure is by direct bonding. Applicant's specification does not disclose that directly bonding the base layer material to the absorbent body structure serves any stated purpose or solves any particular problem; on the contrary, **Applicant's specification teaches that direct bonding and indirect attachment are equivalent (specification, page 8, lines 11-16)**. In light of Serbiak's indication in Figs. 1, 3 and 5-6 of attachment to the absorbent body structure being apparent in a top view, and Serbiak's teaching that attachment of the absorbent body structure to the base layer material prevents extensibility in the area of the absorbent body structure, it would have been obvious to one of ordinary skill in the art to include direct bonding of the base layer material of the bodyside liner to the underlying portion of the absorbent body structure.

However, the above contentions of the October 2007 Office Action are premised on incorrect assumptions that undermine the ultimate conclusion of obviousness.

First, there is the incorrect characterization of what applicants' specification teaches at page 8, lines 11 – 16, which states:

“Attached” and “joined” refers to the bonding, adhering, connecting, and any other method for attaching or joining two elements, including conventional methods of ultrasonic, adhesive, mechanical, sewing, stitching, hydroentangling. Two elements will be considered to be attached or joined together when they are bonded directly to one another or indirectly to one another, such as when each is directly attached to an intermediate element.

The specific statement that elements are considered “attached or joined together” whether they are bonded directly to one another or indirectly to one another, is not saying that direct bonding and indirect attachment are equivalent. Applicants claim 1 language at issue is not either “attached together” or “joined together,” which are the phrases affected by the definitions quoted by the Office Action. Instead, applicants’ claim 1 language at issue is the last two subparagraphs, which state (emphasis added):

at least a first and a second strip of elastomeric material **bonded directly** to said necked base layer material with a space between said strips such that a center necked region of said base layer material is bordered on at least two longitudinally extending sides by flat, planar composite regions of said elastomeric materials and said base layer material, said center region generally aligned with said absorbent body structure; and

wherein said center region of necked base layer material is **bonded directly** to the immediately underlying portion of said absorbent body structure in registry with the center region of necked base layer material in its necked condition

Similarly, applicants’ claim 18 language at issue is the penultimate subparagraph, which states (emphasis added):

a strip of elastomeric material **bonded directly** to said necked base layer material along said longitudinally extending first side region to form a flat, planar composite region and such that said center region of said necked base layer material is adjacent a longitudinally extending composite region of said elastomeric material and said base layer material, said center region of necked base layer

material generally overlying and **bonded directly** to the immediately underlying portion of said absorbent body structure in registry with the center region of necked base layer material in its necked condition; and

The above quotations made by the Office Action are irrelevant to the **bonded directly** language in applicants' claim 1 language and claim 18 language at issue.

Second, the Office Action incorrectly concludes that if Serbiak et al teaches that attachment of the absorbent body structure to the base layer material prevents extensibility in the area of the absorbent body structure, then "it would have been obvious to one of ordinary skill in the art to include **direct bonding** of the base layer material **of the bodyside liner** to the underlying portion of **the absorbent body structure**." Emphasis added. However, Serbiak et al never says that the absorbent core 36 is to be bonded directly to the bodyside liner 24. Moreover, as explained at Serbiak et al column 8, lines 10 – 11, the absorbent core 36 can be mounted between the elastic layer 28 and the outer cover layer 22, a configuration in which the absorbent body structure 36 cannot be bonded directly to the bodyside liner 24.

Applicants therefore respectfully submit that claims 1-3, 5, 6, 9, 18, 19 and 21, as presented herein, are patentable under 35 U.S.C. 103(a) over Serbiak et al.

For the reasons explained below, applicants respectfully traverse the rejection of claims 4, 12, 13, 15-17 and 20 as being unpatentable under 35 U.S.C. 103(a) over Serbiak et al in view of Popp et al.

Popp et al fails to correct the deficiencies noted above in the Office Action's application of Serbiak et al.

Moreover, claims 4 and 20 require the first and second strips of elastomeric materials to be attached to the base layer material in a generally untensioned state.

The Office Action admits that Serbiak et al calls for the opposite of this configuration, namely, that the first and second strips of elastomeric materials 40 be attached to the base layer material 24 in a generally tensioned state. Yet the Office Action contends that it would be obvious to the person of ordinary skill to modify Serbiak et al to attach the first and second strips of elastomeric materials to be attached to the base layer material in a generally untensioned state. However, to modify Serbiak et al in this way directly contradicts Serbiak et al and is therefore not permitted to be attributed to what would be obvious to the person of ordinary skill. M.P.E. P. § 2143.01 V. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Applicants therefore respectfully submit that claims 4, 12, 13, 15-17 and 20 are patentable under 35 U.S.C. 103(a) over Serbiak et al in view of Popp et al.

Applicants respectfully request reconsideration and reexamination of claims 1-6, 9, 12, 13 and 15-21, as presented herein, and submit that these claims are in condition for allowance and should be passed to issue.

If any fee or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 04-1403 for any such fee not submitted herewith.

The Examiner is encouraged to contact the undersigned at the Examiner's convenience should any additional information be required.

Respectfully submitted,

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